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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 BRADFORD P. GOODMAN and
8 PETER W. GOODMAN,

9 Plaintiffs,

10 v.

11 HEAT AND FROST
12 INSULATORS AND ALLIED
13 WORKERS LOCAL 82, et al.,

Defendants.

NO. 2:17-CV-0010-TOR

ORDER DENYING MOTION TO
RECONSIDER

14 BEFORE THE COURT is Plaintiffs' Motion to Reconsider. ECF No. 32.

15 This matter was submitted for consideration without oral argument. The Court has
16 reviewed the record and files herein, and is fully informed. For the reasons
17 discussed below, Plaintiffs' Motion to Reconsider (ECF No. 32) is **DENIED**.

18 **BACKGROUND**

19 On January 6, 2017, Plaintiffs' filed this Complaint, but failed to show that
20 Defendants were served with Summonses and a copy of the Complaint. As a

1 result, on June 12, 2017, the Court issued an Order to Show Cause directing
2 Plaintiffs to demonstrate on or before June 26, 2017, why this matter should not be
3 dismissed for failure to properly serve Defendants. ECF No. 9; *see also* Fed. R.
4 Civ. P. 4(m).

5 Plaintiffs did not respond to the Order to Show Cause nor file proof of
6 service showing Defendants had been properly served with Summonses and the
7 Complaint. Thus, on July 6, 2017, the Court dismissed this action without
8 prejudice. ECF No. 10.

9 Plaintiffs then moved the Court to vacate the dismissal order, explaining that
10 they did not timely receive their mail. *See* ECF Nos. 11–12. Although Plaintiffs’
11 filing (*see* ECF No. 11) titled “Concerning Documents 9 & 10 from The Court
12 Order to Show Cause Order of Dismissal Without Prejudice,” purported to respond
13 to the Court’s Order to Show Cause (*see* ECF No. 9), Plaintiffs did not show
14 proper service nor did they show good cause for additional time to do so.

15 Nevertheless, the Court liberally construed that filing and Plaintiffs’
16 “Summary version of Argument to Reconsider Order to Dismiss Without
17 Prejudice” as Federal Rule of Civil Procedure 60(b) Motions to Reconsider and
18 Vacate the Order of Dismissal. ECF Nos. 11–12. On August 4, 2017, the Court
19 granted Plaintiffs’ construed Fed. R. Civ. P. 60(b) Motions to Reconsider and
20 Vacate Order of Dismissal and re-opened the case. ECF No. 14. The Court

1 extended the time for Plaintiffs to respond to the Court's Order to Show Cause
2 (ECF No. 9) why Plaintiffs have not served Defendants with the Summonses and
3 Complaint pursuant to Federal Rule of Civil Procedure 4(m). Plaintiffs were
4 ordered to file their response by September 5, 2017. ECF No. 14.

5 On August 9, 2017, Plaintiffs filed a Notice of Appeal to the Ninth Circuit
6 Court of Appeals, depriving this Court of jurisdiction to proceed. ECF No. 15. On
7 September 7, 2017, the Ninth Circuit dismissed the appeal by Order and Mandate.
8 ECF No. 26. That Order and Mandate returned jurisdiction back to this Court.

9 On November 27, 2017, the Court ordered Plaintiffs again to show cause by
10 December 29, 2017, why this matter should not be dismissed for failure to properly
11 serve Defendants. ECF No. 28. On December 6, 2017, Plaintiffs responded to the
12 Third Order to Show Cause. ECF No. 29. Plaintiffs contend that they sent the
13 Summonses to Defendants by mail with confirmed delivery on October 25 and 26,
14 2017. *Id.* at 1. Plaintiffs also assert that they emailed the Summonses on October
15 26, 2017 to the three Defendants. *Id.* Plaintiffs ask the Court what they have not
16 done to fulfill the Second Order to Show Cause. *Id.*

17 On January 2, 2018, the Court dismissed Plaintiffs' Complaint without
18 prejudice, explaining the requirements of Federal Rule of Civil Procedure 4(d).
19 ECF No. 30. The Court found that Plaintiffs failed to show good cause why they
20 waited 9 months to attempt to serve Defendants. *Id.* at 4.

1 In the instant motion, Plaintiffs request the Court reconsider its dismissal,
2 arguing that they served the Defendants. ECF No. 32.

3 DISCUSSION

4 Contrary to Plaintiffs' assertion, Plaintiffs have failed to properly serve
5 Defendants according to Federal Rule of Civil Procedure 4(b). *See* ECF No. 32 at
6 1. A plaintiff must serve a defendant by following state law procedure, delivering
7 a copy to the individual personally, or leaving a copy at the individual's dwelling
8 place with someone of suitable age and discretion who resides there. Fed. R. Civ.
9 P. 4(e); *see also* Fed. R. Civ. P. 4(h) (for serving a corporation, partnership, or
10 association). Merely mailing a summons and complaint to a defendant is not
11 sufficient to satisfy this rule.

12 Plaintiffs have failed to show good cause for not serving Defendants within
13 90 days after filing the complaint. Fed. R. Civ. P. 4(c)(1) and (m). The Court
14 cannot extend time for service if a plaintiff fails to show good cause. *Id.* The
15 Court recognizes Plaintiffs' frustration that the case did not reach the merits and
16 that they are making good faith efforts to comply. ECF No. 32 at 2. Yet, *pro se*
17 plaintiffs are still bound by the rules of procedure. *Ghazali v. Moran*, 46 F.3d 52,
18 54 (9th Cir. 1995). A good faith effort does not satisfy the good cause requirement
19 when Plaintiffs must comply with the Federal Rules of Civil Procedure. Still to
20 this day, Plaintiffs have failed to show proper service upon Defendants.

1 Accordingly, the Court denies Plaintiffs' Motion to Reconsider (ECF No.
2 32), as Plaintiffs did not properly serve Defendants nor have they shown good
3 cause for their failure to timely perfect service.

4 **ACCORDINGLY, IT IS HEREBY ORDERED:**

5 Plaintiffs' Motion to Reconsider (ECF No. 32) is **DENIED**.

6 The District Court Executive is directed to enter this Order and furnish
7 copies to Plaintiffs.

8 **DATED** January 30, 2018.



Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge